

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6556 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

ZUBEDA HASAM

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6556 of 1990
MR KJ KAKKAD for Petitioner No. 1-2
Mr. R.C. Kodekar, AGP for Respondent No. 1
NOTICE SERVED for Respondent No. 2
..... for Respondent No. 3
-

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 17/02/2004

ORAL JUDGEMENT

Heard learned advocate Mr.Kakkaad for the petitioner and Mr. RC Kodekar, learned AGP for the respondents. In this petition, there are two petitioners, one is Jubeda Hasam and the another is Vaji Vasta. Both of them are working with the respondent PWD Department. It is their case that the Industrial Tribunal Rajkot has made award in Reference (IT) No. 714 of 1984 (Old Reference No. 400 of 1984) on 17.10.1987 wherein the benefit of work charge has been granted in favour of 243 employees who were working as daily wagers with effect from 1st October, 1987. Further case of the petitioners is to the effect that they are similarly situated employees working with the same department, nature of work and the responsibilities are same and designation is also same but the benefit of the said award has not been given to the petitioner and that is how discriminatory treatment has been given by the respondents, State Authority and, therefore, present petition with a prayer to grant same benefit as granted by the tribunal Rajkot in favour of 243 employees. Against that, the respondent department has filed affidavit in reply. In para 2 and 3 of the said affidavit in reply, the deponent has submitted as under:

"2. I say and submit that the petitioners are unskilled daily wagers working in the department with effect from 1.10.1988. As per Government Resolution No. WCE-1588-(5)-(3)-G-2 dated 17.10.1988, petitioners are getting pay scale and all other benefits of permanent establishment. As per this resolution, petitioners services are treated permanent after ten years of daily wage services. I further submit that as per award of the Industrial Commission in Ref. No. 877 of 1984, the labourers who have approached the Commission and as per permission of Government in (R&B) Department, Sachivalaya, Gandhinagar letter Sr No. SUIT-2788-16444(7) G-2 dated 6.3.90, the labourers are taken on WC Establishment from 1.4.1987 but as per Committee formed by the Government under Presidentship of the Hon'ble Minister Shri Dolatbhai Parmar, the Government have accepted the recommendation of this Committee and issued the Circular dated 17.10.1988, as per this circular labourers are getting all the pay and benefits such as Pay, DA, Medical Allowances etc. and earned leave, medical leave, casual leave etc. as is given to the regular establishment employees.

3. I say that the petitioners are getting

the benefits as per the Circular dated 17.10.1988 and are entitled to get the benefits of increment and their services are considered as permanent after ten years. They are also benefited with pension and gratuity as per rules in force. Thus, it does not seem that there is injustice caused to the petitioners. Since the Rajkot division has no powers to make the petitioners permanent nothing can be done in this matter. However, they are getting all the benefits of a regular establishment employees and will get the benefit of pension and gratuity on their attaining superannuation age. It is therefore submitted that in view of the aforesaid factual facts this petition may be dismissed."

Aforesaid affidavit was filed by the deponent PB Jadeja, Deputy Executive Engineer on 26th May, 2000.

Learned advocate Mr. Kakkad also pointed out before this Court that prior to the aforesaid affidavit, one affidavit was also filed by Mr. Damor, Under Secretary, dated 7th February, 1991 wherein also same averments were made by the said deponent on behalf of the respondents. In para 7 of the said affidavit made by the Under Secretary Mr. Damor, it has been submitted that at present, the policy laid down by way of GR dated 17.10.1988 is in force and the petitioners are getting the benefit under the said Resolution. In the affidavit filed by Mr. Damor, Under Secretary, it has been contended that the petitioners are not entitled for the benefit of the award passed by the Tribunal but one fact has been admitted that the benefit under the GR dated 17.10.1988 has been extended to the petitioners. Thus, according to the averments made by the deponent in the reply filed on behalf of the respondents, these two workmen are getting the benefit of the GR dated 17.10.88 and both of them are made permanent and are getting the regular salary. Therefore, considering the aforesaid two affidavits made by the respondents, one fact is clear that the benefit of permanency as stated in the Government Resolution has been given to the petitioners. However, learned advocate Mr. Kakkad is having some doubt that no specific order has been issued in favour of the petitioner by the respondent and no benefit has been given to the petitioners. In view of such doubt in the mind of the learned advocate Mr. Kakkad, though no rejoinder to the reply has been filed by the petitioners, by way of little care, this Court is directing the respondents to give all benefits which are flowing from the GR dated 17.10.1988 if so far not given by the

respondents to the petitioners within two months from the date of receipt of copy of this order. It is clarified that if the respondents have already extended all such benefits flowing from the GR dated 17.10.1988, then, there is no need to grant such benefit to the petitioners. If such benefits have already been given by the respondents to the petitioners, then, the respondents shall have to communicate the same to the petitioners in writing. With these observations and directions, this petition is disposed of. Rule is discharged. Interim relief, if any, shall stand vacated. There shall be no order as to costs.

Dt. 17.2.2004. (H.K. Rathod,J.)

Vyas